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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/833,390	04/11/2001	C. Richard Triola	CRT044UT	3769

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EXAMINER

BACKER, FIRMIN

ART UNIT PAPER NUMBER

3621

DATE MAILED: 03/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/833,390

Applicant(s)

TRIOLA, C. RICHARD

Examiner

Firmin Backer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Response to Affidavit

1. The affidavit filed on October 12th, 2004 under 37 CFR 1.131 has been considered but is ineffective to overcome the Gaff (U.S. PG Pub No. 2002/0046144) reference.
2. The Gaff (U.S. PG Pub No. 2002/0046144) reference is a statutory bar under 35 U.S.C. 102(b) and thus cannot be overcome by an affidavit or declaration under 37 CFR 1.131.
3. The evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of the Gaff (U.S. PG Pub No. 2002/0046144) reference to either a constructive reduction to practice or an actual reduction to practice. The reference Application 09/785254 is a continuation-of US application 09/134451, filed August 14, 1998, US Patent No. 6192347. Therefore priority data of August 14th, 1998 has been claimed in the reference which is before April 20th, 2000, the data of claimed conception.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 4-21 are rejected under 35 U.S.C. 102(e) as being anticipated by Gaff (U.S. PG Pub No. 2002/0046144)

6. As per claims 4, Gaff teaches a web based-server computer system for escrow office related processes of real estate title transfer comprising: at least one client module associated with at least one client party for initiating an escrow process with at least one escrow-holder party, and at least one server module associate with the escrow-holder party, wherein a specific escrow account between the client party and the escrow party is established, maintained, tracked, and consummated via the client-server computer system (*see fig 1, paragraphs 0854-0861, 0866, 1162, 1205, 1219, 1260, 1280*).

7. As per claims 5, Gaff teaches a system comprising on-line entry and transmission of escrow initiation, escrow instructions, escrow status tracking, and escrow consummation between the server party and the client party (*see fig 1, paragraphs 0854-0861, 0866, 1162, 1205, 1219, 1260, 1280*).

8. As per claims 6, Gaff teaches a system wherein at least one server module associated with the escrow party further comprising: on-line entry and transmission of service provider data between the server party and at least one service provider (*see fig 1, paragraphs 0854-0861, 0866, 1162, 1205, 1219, 1260, 1280*).

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9. As per claims 7-10 Gaff teaches a system comprising computer code providing data security and digital identity authentication for each party, digital tracking transfer of funds or buyer-seller compensation arrangement and disbursement of the funds or other buyer-seller compensation at or after final closing of the escrow process (*see fig 1, paragraphs 0854-0861, 0866, 1162, 1205, 1219, 1260, 1280*).

10. As per claims 11 and 17, Gaff teaches a computerized, on-line method for real estate escrow processes performed by an escrow company holding an escrow account comprising a computer based automation system of components for implementing, management and tracking of the escrow real estate transfer wherein data and document for implementing managing and tracking the escrow processes of a real estate transfer are accessible online for specific parties to the escrow account (*see fig 1, paragraphs 0854-0861, 0866, 1162, 1205, 1219, 1260, 1280*).

11. As per claims 12, Gaff teaches a computerized, on-line method of distributing the components as computer code modules residing at principals and parties to the escrow account for providing party-associated data entry and access (*see fig 1, paragraphs 0854-0861, 0866, 1162, 1205, 1219, 1260, 1280*).

12. As per claims 13, Gaff teaches a computerized, on-line method including security measures providing for a variety of stat and access levels to the escrow data and documents (*see fig 1, paragraphs 0854-0861, 0866, 1162, 1205, 1219, 1260, 1280*).

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13. As per claims 14, Gaff teaches a process for a computerized escrow transaction comprising: providing escrow account data and electronic document, escrow status, broker status, lender status, buyer status, seller status, and vendor status via a centralized server associated with an escrow officer; and connecting parties to the computerized online estate escrow transaction using multiple computer network access devices via connectivity types which include but are not limited to wireless, satellite, dial-up, or leased communications (*see fig 1, paragraphs 0854-0861, 0866, 1162, 1205, 1219, 1260, 1280*).

14. As per claims 15, Gaff teaches a system for real-time or near-real-time escrow transactions processes and procedures and documentation, comprising online internet communication programs and associated with the internet communication programs: an appropriate data, electronic documents application, and transactional management network programs and including supporting network based applications for performing at least one of the escrow services selected from a group including receiving and storing escrow instructions upon submission by a party to the escrow transaction via a computerized communications device, disseminating instructions to all relevant parties by computer; providing escrow documentation, providing escrow documentation approvals; automating order specified services real-time and near-real-time display of escrow instructions, status, and activity, on-line digital identification authentication; transfer of ownership, closing escrow, releasing of escrow funds; and digital transfer of escrow funds (*see fig 1, paragraphs 0854-0861, 0866, 1162, 1205, 1219, 1260, 1280*)).

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15. As per claims 16, Gaff teaches a method of doing business using an internet comprising: providing an on-line escrow account for parties to a transaction; providing on-line transactional account management services with respect to the on-line escrow account for the parties; and providing secure access to the on-line escrow account limited to the parties and third parties using on-line identification authentication (*see fig 1, paragraphs 0854-0861, 0866, 1162, 1205, 1219, 1260, 1280*).

16. As per claims 18, Gaff teaches a memory wherein the program code allowing escrow transaction data access only for specific parties to the escrow transaction further comprises: program code for identification authentication (*see fig 1, paragraphs 0854-0861, 0866, 1162, 1205, 1219, 1260, 1280*).

17. As per claims 19, Gaff teaches a memory wherein the program code providing implementation, management, tracking, and closing of specific escrow transactions further comprises: program code for digital signatures (*see fig 1, paragraphs 0854-0861, 0866, 1162, 1205, 1219, 1260, 1280*).

18. As per claims 20, Gaff teaches a memory comprising: program code for a method of doing business using an internet, the code including computerized processes for providing an on-line escrow account for parties to a transaction, providing on-line transactional account management services with respect to the on-line escrow account for the parties, and providing secure access to the on-line escrow account limited to the parties and third parties using on-line

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identification authentication (*see fig 1, paragraphs 0854-0861, 0866, 1162, 1205, 1219, 1260, 1280*).

19. As per claims 21, Gaff teaches A computer based automation system for escrow processes and documentation using Internet computing technology, the system comprising, means for implementing, managing, and tracking real estate transfer and real estate financing processes by and among principal parties and their agents with respect to an escrow company account requiring the processes and documentation; and means for providing data and documents associated with the implementing, managing, and tracking such that the data and documents are accessible to the principal parties thereto and their agents and officers of the escrow company account via internet. (*see fig 1, paragraphs 0854-0861, 0866, 1162, 1205, 1219, 1260, 1280*).

Response to Arguments

20. Applicant's arguments filed October 12th, 2004 have been fully considered but they are not persuasive.

a. Applicant basically argues that the prior art Graff which is a continuation-of US application 09/134451, filed August 14, 1998, US Patent No. 6192347 fails to teach an inventive concept disclose in the application. Applicant especially emphasized that the prior art fail to teach an inventive concept of an escrow company performing real estate transaction. Examiner respectfully disagrees with applicant characterization of the prior art. Graff clearly teach an Escrow Agent acts hereunder as a depository only and is not

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responsible or liable in any manner whatsoever for (i) the sufficiency, correctness, genuineness, collection or validity of any instrument deposited with it, (ii) the form of execution of such instruments, (iii) the identity, authority or rights of any person executing or depositing the same, or (iv) the terms and conditions of any instrument pursuant to which the parties may act, except for its gross negligence or willful default. In Graff's inventive concept, Seller shall provide Buyer, on or before the Closing Date, with a non-foreign affidavit sufficient in form and substance to relieve Buyer of any and all withholding obligations under federal law, which affidavit shall be substantially in the form attached hereto as Exhibit H. If Seller does not furnish Buyer with said affidavit, or if Buyer has reason to believe that said affidavit would be wholly or partially false if given and so notifies Seller, in writing, on or before the Closing Date, Buyer shall be entitled to withhold up to ten percent (10%) of the Purchase Price in an escrow account until such time as Seller furnishes Buyer with a qualifying statement from the Internal Revenue Service sufficient to relieve Buyer of any and all withholding obligations under federal law, or until Buyer is required to deliver said funds to the Internal Revenue Service, whichever first occurs. 15, MISCELLANEOUS. 15.1 No Waiver. No waiver by any party of the performance or satisfaction of any covenant or condition shall be valid unless in writing and shall not be considered to be a waiver by such party of any other covenant or condition hereunder. 15.2 Entire Agreement. This Agreement contains the entire agreement between the parties regarding the Property and supersedes all prior agreements, whether written or oral, between the parties regarding the same subject. This Agreement may only be modified in writing. 15.3. Survival. Except for as otherwise

specifically provided in this Agreement, none of the agreements, warranties and representations contained herein shall survive the Closing. 15.4 Successors. This Agreement shall bind and inure to the benefit of the parties hereto and to their respective legal representatives, successors and permitted assigns. 15.5 Assignment. Buyer shall have the right to assign its rights (but not its obligations) under this Agreement to two trusts to be established by Buyer one of which trusts shall acquire an estate for years in the Property (the "Term Trust") and one of which shall acquire the remaining interest of Seller in the Property (the "Reversion Trust"). Seller shall cooperate in all reasonable respects with Buyer in effecting such conveyances, provide that Seller shall not be required to incur any incrementally additional expense in so cooperating. Except as provided above, Buyer shall not have any right to assign, transfer or encumber its rights under this Agreement, without the prior written consent of Seller, which consent may be withheld in Seller's sole, absolute and unfettered discretion. Any assignment, transfer or encumbrance by Buyer requiring, but made without, Seller's prior written consent, shall be void ab initio and shall constitute a breach by Buyer of this Agreement entitling Seller to terminate this Agreement and exercise its remedies to immediately draw down the Letter of Credit and retain the proceeds thereof as liquidated damages under Section 12.1 hereof. No assignment, transfer or encumbrance solely in favor of person(s) or entity(ies) in a control relationship with Buyer shall be deemed to violate this Section 14.5. "Control relationship" shall be deemed to mean either (a) ownership of fifty percent (50%) or more of all of the voting stock of a corporation or fifty percent (50%) or more of all of the legal and equitable interest in a partnership or other business entity or (b) the possession of the

power directly or indirectly to direct or cause the direction of management and policy of a corporation, partnership or other business entity, whether through the ownership of voting securities, by contract, common directors or officers, the contractual right to manage the business affairs of any such corporation, partnership or business entity, or otherwise. Buyer represents, warrants and certifies to Seller that Buyer has not assigned, transferred or encumbered or agreed to assign, transfer or encumber, directly or indirectly, all or any portion of its rights or obligations under this Agreement in violation of this Section.

15.6 Relationship of the Parties. The parties acknowledge that neither party is an agent for the other party, and that neither party shall or can bind or enter into agreements for the other party.

15.7 Governing Law. This Agreement and the legal relations between the parties hereto shall be governed by and construed in accordance with the laws of the State of Missouri.

15.8 Possession; Risk of Loss. Seller shall deliver to Buyer possession of the Property on the Closing Date, subject to Permitted Exceptions and the terms and conditions of this Agreement. All risk of loss or damage with respect to the Property shall pass from Seller to Buyer on the Closing Date.

15.9 Review by Counsel. The parties acknowledge that each party and its counsel have reviewed and approved this Agreement, and the parties hereby agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

15.10 Termination. Upon termination of this Agreement for any reason by either party, Buyer shall have the obligation to return to Seller all documents and copies thereof (including the survey, if any) and any other information or documentation

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prepared by any third party in conjunction with Buyer's inspections of the Property.

Seller shall not have any obligation to return the Letter of Credit to Buyer, upon any termination of this Agreement by Buyer, until the documents and copies thereof

(including the survey, if any) and other information have been return to Seller. 15.11

Exhibits. The Exhibits attached hereto form a part of this Agreement and are incorporated herein by this reference. 16. CONDITION PRECEDENT.

Conclusion

21. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

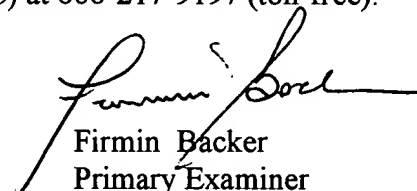
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Firmin Backer whose telephone number is (703) 305-0624. The examiner can normally be reached on Mon-Thu 9:00 AM - 5:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammell can be reached on (703) 305-9768. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Firmin Backer
Primary Examiner
Art Unit 3621

January 17, 2005